

**53C-1-101. Title.**

This title is known as the "School and Institutional Trust Lands Management Act."

Repealed and Re-enacted by Chapter 294, 1994 General Session

**53C-1-102. Purpose.**

(1) (a) The purpose of this title is to establish an administration and board to manage lands that Congress granted to the state for the support of common schools and other beneficiary institutions, under the Utah Enabling Act.

(b) This grant was expressly accepted in the Utah Constitution, thereby creating a compact between the federal and state governments which imposes upon the state a perpetual trust obligation to which standard trust principles are applied.

(c) Title to these trust lands is vested in the state as trustee to be administered for the financial support of the trust beneficiaries.

(2) (a) The trust principles referred to in Subsection (1) impose fiduciary duties upon the state, including a duty of undivided loyalty to, and a strict requirement to administer the trust corpus for the exclusive benefit of, the trust beneficiaries.

(b) As trustee, the state must manage the lands and revenues generated from the lands in the most prudent and profitable manner possible, and not for any purpose inconsistent with the best interests of the trust beneficiaries.

(c) The trustee must be concerned with both income for the current beneficiaries and the preservation of trust assets for future beneficiaries, which requires a balancing of short and long-term interests so that long-term benefits are not lost in an effort to maximize short-term gains.

(d) The beneficiaries do not include other governmental institutions or agencies, the public at large, or the general welfare of this state.

(3) This title shall be liberally construed to enable the board of trustees, the director, and the administration to faithfully fulfill the state's obligations to the trust beneficiaries.

Repealed and Re-enacted by Chapter 294, 1994 General Session

**53C-1-103. Definitions.**

As used in this title:

(1) "Administration" means the School and Institutional Trust Lands Administration.

(2) "Board" or "board of trustees" means the School and Institutional Trust Lands Board of Trustees.

(3) "Director" or "director of school and institutional trust lands" means the chief executive officer of the School and Institutional Trust Lands Administration.

(4) "Mineral" includes oil, gas, and hydrocarbons.

(5) "Nominating committee" means the committee that nominates candidates for positions and vacancies on the board.

(6) "Policies" means statements applying to the administration that broadly prescribe a future course of action and guiding principles.

(7) "Primary beneficiary representative" means the State Board of Education acting as representative on behalf of the following trusts:

- (a) the trust established for common schools;
- (b) the trust established for schools for the blind; and
- (c) the trust established for schools for the deaf.

(8) "School and institutional trust lands" or "trust lands" means those properties granted by the United States in the Utah Enabling Act to the state in trust, and other lands transferred to the trust, which must be managed for the benefit of:

- (a) the state's public education system; or
- (b) the institutions of the state which are designated by the Utah Enabling Act as beneficiaries of trust lands.

Amended by Chapter 224, 2012 General Session

**53C-1-201. Creation of administration -- Purpose -- Director -- Participation in Risk Management Fund.**

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund Management Act.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as provided in this Subsection (3).

(b) (i) The director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

- (i) the changes in business opportunities affecting the assets of the trust;
- (ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;
- (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met

without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) The board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges.

(v) The board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board.

(e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to the fee agency requirements of Section 63J-1-504.

(ii) The following fees of the administration are subject to the requirements of Section 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change, reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral assignment, electronic payment, and processing.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. The director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native

American remains.

(6) In connection with joint ventures and other transactions involving trust lands and minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board approval, may become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 and is considered a person under Section 48-2c-102 or Section 48-3a-102.

(7) Subject to the requirements of Subsection 63E-1-304(2), the administration may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Amended by Chapter 426, 2014 General Session

**53C-1-202. Board of trustees membership -- Nomination list -- Qualifications -- Terms -- Replacement -- Chair -- Quorum.**

(1) There is established the School and Institutional Trust Lands Board of Trustees.

(2) The board shall consist of seven members appointed on a nonpartisan basis by the governor with the consent of the Senate.

(3) (a) Except for the appointment made pursuant to Subsection (5), all appointments to the board shall be for a nonconsecutive term of six years, or until a replacement has been appointed and confirmed pursuant to this section.

(b) If a vacancy occurs, the governor shall appoint a replacement, following the procedures set forth in Subsections (2), (4), (5), and (6), to fill the unexpired term.

(c) Any member of the board who has served less than six years upon the expiration of that member's term is eligible for a consecutive reappointment.

(4) (a) The governor shall select six of the seven appointees to the board from a nomination list of at least two candidates for each position or vacancy submitted pursuant to Section 53C-1-203.

(b) The governor may request an additional nomination list of at least two candidates from the nominating committee if the initial list of candidates for a given position is unacceptable.

(c) (i) If the governor fails to select an appointee within 60 days after receipt of the initial list or within 60 days after the receipt of an additional list, the nominating committee shall make an interim appointment by majority vote.

(ii) The interim appointee shall serve until the matter is resolved by the committee and the governor or until replaced pursuant to this chapter.

(5) (a) The governor may appoint one member without requiring a nomination list.

(b) The member appointed under Subsection (5)(a) serves at the pleasure of the governor.

(6) (a) Each board candidate shall possess outstanding professional qualifications pertinent to the purposes and activities of the trust.

(b) The board shall represent the following areas of expertise:

(i) nonrenewable resource management or development;

- (ii) renewable resource management or development; and
- (iii) real estate.
- (c) Other qualifications which are pertinent for membership to the board are expertise in any of the following areas:
  - (i) business;
  - (ii) investment banking;
  - (iii) finance;
  - (iv) trust administration;
  - (v) asset management; and
  - (vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i) through (v).
- (7) The board of trustees shall select a chair and vice chair from its membership.
- (8) Before assuming a position on the board, each member shall take an oath of office.
- (9) Four members of the board constitute a quorum for the transaction of business.
- (10) The governor or five board members may, for cause, remove a member of the board.

Amended by Chapter 247, 2011 General Session

**53C-1-203. Board of trustees nominating committee -- Composition -- Responsibilities -- Per diem and expenses.**

- (1) There is established an 11 member board of trustees nominating committee.
- (2) (a) The State Board of Education shall appoint five members to the nominating committee from different geographical areas of the state.
- (b) The governor shall appoint five members to the nominating committee on or before the December 1 of the year preceding the vacancy on the nominating committee as follows:
  - (i) one individual from a nomination list of at least two names of individuals knowledgeable about institutional trust lands submitted on or before the October 1 of the year preceding the vacancy on the nominating committee by the University of Utah and Utah State University on an alternating basis every four years;
  - (ii) one individual from a nomination list of at least two names submitted by the Utah Farm Bureau in consultation with the Utah Cattleman's Association and the Utah Wool Growers' Association on or before the October 1 of the year preceding the vacancy on the nominating committee;
  - (iii) one individual from a nomination list of at least two names submitted by the Utah Petroleum Association on or before the October 1 of the year preceding the vacancy on the nominating committee;
  - (iv) one individual from a nomination list of at least two names submitted by the Utah Mining Association on or before the October 1 of the year preceding the vacancy on the nominating committee; and
  - (v) one individual from a nomination list of at least two names submitted by the executive director of the Department of Natural Resources after consultation with

statewide wildlife and conservation organizations on or before the October 1 of the year preceding the vacancy on the nominating committee.

(c) The president of the Utah Association of Counties shall designate the chair of the Public Lands Steering Committee, who must be an elected county commissioner or councilor, to serve as the eleventh member of the nominating committee.

(3) (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the state board and the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The nominating committee shall select a chair and vice chair from its membership by majority vote.

(5) (a) The nominating committee shall nominate at least two candidates for each position or vacancy which occurs on the board of trustees except for the governor's appointee under Subsection 53C-1-202(5).

(b) The nominations shall be by majority vote of the committee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The School Children's Trust Section, established in Section 53A-16-101.6, shall provide staff support to the nominating committee.

Amended by Chapter 426, 2014 General Session

**53C-1-204. Policies established by board -- Director.**

(1) (a) The board shall establish policies for the management of the School and Institutional Trust Lands Administration.

(b) The policies shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and state law;

(ii) reflect undivided loyalty to the beneficiaries consistent with fiduciary duties;

(iii) require the return of not less than fair market value for the use, sale, or exchange of school and institutional trust assets;

(iv) seek to optimize trust land revenues and increase the value of trust land holdings consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains;

(v) maintain the integrity of the trust and prevent the misapplication of its lands and its revenues; and

(vi) have regard for and seek General Fund appropriation compensation for the general public's use of natural and cultural resources consistent with the duties of the

administration as trustee for the beneficiaries.

(2) The board shall ensure that the administration is managed according to law.

(3) The board shall establish due process procedures governing adjudicative proceedings conducted by the board and the administration.

(4) The board and the director shall recommend to the governor and the Legislature any necessary or desirable changes in statutes relating to the trust or their trust responsibilities.

(5) The board shall develop policies for the long-term benefit of the trust utilizing the broad discretion and power granted to it in this title.

(6) (a) (i) On at least three occasions during each calendar year and in cooperation with the director, the board shall consult with an advisory committee consisting of five county commissioners appointed by the Utah Association of Counties concerning the impact of trust land management practices on rural economies.

(ii) The director shall notify the chair of the committee prior to any proposed board actions. At the request of the committee and prior to taking the proposed action, the board shall meet with the committee at the next scheduled board meeting.

(b) The association shall appoint the commissioners from five different counties based on such factors as a county's total acreage of trust lands, the revenues generated from trust lands in the county, and the potential for economic development of trust lands within the county.

(c) The advisory committee may request additional consultations it considers necessary or appropriate, to be scheduled within a reasonable time after receipt of the request by the administration.

(7) The board shall utilize the services of the attorney general as provided in Section 53C-1-305.

(8) The board may:

(a) (i) establish advisory committees to advise the board, director, or administration on policies affecting the management of the trust, and pay the compensation and travel expenses in accordance with rules adopted by the Division of Finance; and

(ii) after conferring with the director, hire consultants to advise the board, director, or administration on issues affecting the management of the trust, and pay compensation to the consultants from money appropriated for that purpose;

(b) with the consent of the state risk manager, authorize the director to manage lands or interests in lands held by any other public or private party, if:

(i) all management costs are compensated by the parties;

(ii) there is a commensurate return to the beneficiaries; and

(iii) the additional responsibilities do not detract from the administration's responsibilities and its duty of undivided loyalty to the beneficiaries;

(c) issue subpoenas or authorize a hearing officer to issue subpoenas, to compel the attendance of witnesses and the production of documents in adjudicative proceedings authorized by law and administer oaths in the performance of official duties; and

(d) submit in writing to the director a request for responses, to be made within a reasonable time, to questions concerning policies and practices affecting the management of the trust.

(9) Board members shall be given access to all administration records and personnel consistent with law and as necessary to permit the board to accomplish its responsibilities to ensure that the administration is in full compliance with applicable policies and law.

Amended by Chapter 247, 2011 General Session

**53C-1-301. Director -- Term -- Compensation -- Removal from office.**

(1) (a) The board, with the consent of the governor, shall select the director on the basis of outstanding professional qualifications pertinent to the purposes and activities of the trust.

(b) If the governor withholds his consent from a candidate agreed upon by the board, he shall give his reasons in writing to the board.

(2) The director shall serve a term of four years, or until a successor is selected and qualified.

(3) When a vacancy occurs in the office of the director, the vacancy shall be filled pursuant to Subsection (1) for the remainder of the term.

(4) (a) The board:

(i) shall establish the compensation of the director; and

(ii) annually report the director's compensation to the Legislature.

(b) The compensation and performance of the director shall be examined each year as part of the board's budget review process.

(5) (a) The board may remove the director from office for cause by a majority vote of the board.

(b) (i) The governor may petition the board for removal of the director for cause.

(ii) The board shall hold a hearing on the governor's petition within 60 days after its receipt.

(iii) If after the hearing the board finds by a preponderance of the evidence cause for removal, it shall remove the director from office by a majority vote.

Amended by Chapter 337, 1996 General Session

**53C-1-302. Management of the administration -- Trust responsibilities.**

(1) (a) The director has broad authority to:

(i) manage the School and Institutional Trust Lands Administration in fulfillment of its purpose;

(ii) establish fees, procedures, and rules consistent with general policies prescribed by the board of trustees; and

(iii) acquire and dispose of lands and assets in accordance with law.

(b) The procedures and rules shall:

(i) be consistent with the Utah Enabling Act, the Utah Constitution, and policies of the board;

(ii) reflect undivided loyalty to the beneficiaries consistent with the director's fiduciary duties and responsibilities;

(iii) subject to Subsection (2), obtain the optimum values from use of trust lands and revenues for the trust beneficiaries, including the return of not less than fair market



value for the use, sale, or exchange of school and institutional trust assets; and

(iv) be broadly construed to grant the board, director, and administration full discretionary authority to manage, maintain, or dispose of trust assets in the manner they consider most favorable to the beneficiaries.

(2) The director shall seek to optimize trust land revenues consistent with the balancing of short and long-term interests, so that long-term benefits are not lost in an effort to maximize short-term gains.

(3) The director shall maintain the integrity of the trust and prevent, through prudent management, the misapplication of its lands and revenues.

Amended by Chapter 247, 2011 General Session

**53C-1-303. Responsibilities of director -- Budget review -- Legal counsel -- Contract for services.**

(1) In carrying out the policies of the board of trustees and in establishing procedures and rules the director shall:

- (a) take an oath of office before assuming any duties as the director;
- (b) adopt procedures and rules necessary for the proper administration of matters entrusted to the director by state law and board policy;
- (c) submit to the board for its review and concurrence on any rules necessary for the proper management of matters entrusted to the administration;
- (d) faithfully manage the administration under the policies established by the board;
- (e) submit to the board for public inspection an annual management budget and financial plan for operations of the administration and, after approval by the board, submit the budget to the governor;
- (f) direct and control the budget expenditures as finally authorized and appropriated;
- (g) establish job descriptions and employ, within the limitation of the budget, staff necessary to accomplish the purposes of the office subject to Section 53C-1-201;
- (h) establish, in accordance with generally accepted principles of fund accounting, a system to identify and account for the assets and vested interests of each beneficiary;
- (i) notify the primary beneficiary representative's designee regarding the trusts listed in Subsection 53C-1-103(7) on major items that the director knows may be useful to the primary beneficiary representative's designee in protecting beneficiary rights;
- (j) permit the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) reasonable access to inspect records, documents, and other trust property pertaining to that trust, provided that the primary beneficiary representative's designee shall maintain confidentiality if confidentiality is required of the director;
- (k) maintain appropriate records of trust activities to enable auditors appointed by appropriate state agencies or the board to conduct periodic audits of trust activities;
- (l) provide that all leases, contracts, and agreements be submitted to legal counsel for review of compliance with applicable law and fiduciary duties prior to execution and utilize the services of the attorney general as provided in Section

53C-1-305;

(m) keep the board, beneficiaries, governor, Legislature, and the public informed about the work of the director and administration by reporting to the board in a public meeting at least once during each calendar quarter; and

(n) respond in writing within a reasonable time to a request by the board or the primary beneficiary representative's designee regarding a trust listed in Subsection 53C-1-103(7) for responses to questions on policies and practices affecting the management of the trust.

(2) The administration shall be the named party in substitution of the Division of State Lands and Forestry or its predecessor agencies, with respect to all documents affecting trust lands from the effective date of this act.

(3) The director may:

(a) with the consent of the state risk manager and the board, manage lands or interests in lands held by any other public or private party pursuant to policies established by the board and may make rules to implement these board policies;

(b) sue or be sued as the director of school and institutional trust lands;

(c) contract with other public agencies for personnel management services;

(d) contract with any public or private entity to make improvements to or upon trust lands and to carry out any of the responsibilities of the office, so long as the contract requires strict adherence to trust management principles, applicable law and regulation, and is subject to immediate suspension or termination for cause; and

(e) with the approval of the board enter into joint ventures and other business arrangements consistent with the purposes of the trust.

(4) Any application or bid required for the lease, permitting, or sale of lands in a competitive process or any request for review pursuant to Section 53C-1-304 shall be considered filed or made on the date received by the appropriate administrative office, whether transmitted by United States mail or in any other manner.

Amended by Chapter 224, 2012 General Session

**53C-1-304. Rules to ensure procedural due process -- Board review of director action -- Judicial review.**

(1) The board shall make rules to ensure procedural due process in the resolution of complaints concerning actions by the board, director, or the administration.

(2) (a) Except as provided in Subsection (2)(b), an aggrieved party to a final action by the director or the administration may petition the board for administrative review of the decision.

(b) Final actions by the director or administration to lease, sell, or exchange specific real property or other trust assets are not subject to administrative review.

(3) (a) The board may appoint a qualified hearing examiner for purposes of taking evidence and making recommendations for board action.

(b) The board shall consider the recommendations of the examiner in making decisions.

(4) (a) The board shall uphold the decision of the director or the administration unless it finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or rules.

(b) The board shall base its final actions on findings and conclusions and shall inform the aggrieved party of its right to judicial review.

(5) An aggrieved party to a final action by the board may obtain judicial review of that action under Sections 63G-4-402 and 63G-4-403.

Amended by Chapter 247, 2011 General Session

**53C-1-305. Attorney general to represent administration.**

(1) The attorney general shall:

(a) represent the board, director, or administration in any legal action relating to trust lands except as otherwise provided in Subsection (3);

(b) review leases, contracts, and agreements submitted for review prior to execution; and

(c) undertake suits for the collection of royalties, rental, and other damages in the name of the state.

(2) The attorney general may institute actions against any party to enforce this title or to protect the interests of the trust beneficiaries.

(3) The administration may, with the consent of the attorney general, employ in house legal counsel to perform the duties of the attorney general under Subsections (1) and (2).

(4) In those instances where the interests of the trust beneficiaries conflict with those of state officers or executive department agencies for which the attorney general acts as legal advisor under Utah Constitution Article VII, Section 16, the board may, with the consent of the attorney general, employ independent counsel to represent and protect those interests.

Amended by Chapter 237, 2000 General Session

**53C-1-306. Board and administration subject to Public Officers' and Employees' Ethics Act.**

(1) Board members, the director, employees, and agents of the administration are subject to the requirements of Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, and to any additional requirements established by the board.

(2) A board member, the director, or an employee of the administration may not directly or indirectly acquire any interest in trust lands or receive any direct benefit from any transaction dealing with trust lands, except as provided by law and after providing notice to the board, director, attorney general, and the governor.

Enacted by Chapter 294, 1994 General Session